

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

RICHARD J. SILVERSTEIN, et al. *

Plaintiffs *

vs. * CIVIL ACTION NO. MJG-12-2430

WESTFAX, INC., et al. *

Defendants *

* * * * *

MEMORANDUM AND ORDER RE: PARTIAL SUMMARY JUDGMENT

The Court has before it Plaintiffs' Motion for Partial Summary Judgment Regarding Liability Under the TCPA [Document 157] and the materials submitted relating thereto. The Court finds that neither a response nor a hearing is necessary.

By the motion, Plaintiffs state that they wish the Court to:

[R]ule as a matter of law that any person who sends an unsolicited fax ad in violation of the TCPA may be liable under the TCPA, regardless of whether the person is also liable under the FCC regulations as a "fax broadcaster," and regardless of whether the person has a high degree of involvement or actual knowledge of the violations they took part in or caused.

[Document 157] at 1, 11.

Subject to certain exceptions, the TCPA renders it unlawful for "any person within the United States . . . to use any telephone facsimile machine, computer, or other device to send,

to a telephone facsimile machine, an unsolicited advertisement." 47 U.S.C. § 227 (b)(1).

Federal Rule of Civil Procedure 56(a) permits a party to move for summary judgment "identifying each claim or defense - or the part of each claim or defense - on which summary judgment is sought." Plaintiffs' motion merely states that Defendant Westfax, Inc. and Barry Clark have raised the "fax broadcaster issue." Plaintiff does not seek summary judgment against any particular defendant with regard to any specific set of facts as to which there is purportedly no genuine issue of material fact. A motion for summary judgment should not be used to have the Court provide an answer to a hypothetical question.

Accordingly, Plaintiffs' Motion for Partial Summary Judgment Regarding Liability Under the TCPA [Document 157] is DENIED¹.

SO ORDERED, this Wednesday, May 22, 2013.

/s/

Marvin J. Garbis
United States District Judge

¹ If, and when, any party presents a proper motion for summary judgment that motion shall be considered in due course.